

## REMARKS

The Office Action mailed August 12, 2008 has been carefully considered together with each of the references cited therein. The remarks presented herein are believed to be fully responsive to the Office Action. Accordingly, reconsideration of the present Application in view of the following remarks is respectfully requested.

### Claim Rejections under § 102

Claims 1, 2, and 14 stand rejected under 35 U.S.C. 102(b) as being anticipated by Von der Eltz, et al., (US 3,681,005). This rejection is respectfully traversed.

The Office stated in the previous office action, "Von der Eltz, et al., teach treating polyester with an aqueous liquor comprising a chromium complex (column 5 example 5). Accordingly, the teachings of Von der Eltz are sufficient to anticipate the material limitations of the instant claims".

Applicant respectfully traverses this rejection once again. Von der Eltz, et al., teaches dyeing a mixture of wool and polyester fibers with a mixture of 1:2 complex-metal compounds of azo dyestuffs and dispersion dyestuffs, with the 1:2 complex-metal compounds of azo dyestuffs being used to dye the wool and not the polyester. The Office's attention is courteously directed to Column 3, lines 36 – 41 of Von der Eltz, et al., where it states, "... it is a considerable advantage of the present process that the easily obtainable, simply applicable 1:2 complex-metal compounds of azo dyestuffs that are sparingly in water can now be used with good color yield also for dyeing wool", (emphasis added).

Furthermore, one with ordinary skill in the art would be fully aware that the 1:2 metal complex compounds are acid dyes. Acid dyes by their very nature are hydrophilic and will only be attracted to a fiber that is also hydrophilic. Therefore, Von der Eltz, et al., can not anticipate Claim 1 which reads "...wherein the at least one transition metal coordination compound is not water soluble..." (emphasis added).

As previously stated it is well settled that to anticipate a claim, a single source must contain all of the elements of the claim. See *Hybritech Inc. v. Monoclonal Antibodies, Inc.*, 802 F.2d 1367, 1379, 231 U.S.P.Q. 81, 90 (Fed. Cir. 1986); *Atlas Powder Co. v. E.I. du Pont De Nemours & Co.*, 750 F.2d 1569, 1574, 224 U.S.P.Q. 409, 411 (Fed. Cir. 1984); *In re Marshall*, 578 F.2d 301, 304, 198 U.S.P.Q. 344, 346 (C.C.P.A. 1978). Therefore, Von der Eltz, et al., does not contain all of the elements of Claims 1, 2, and 14, Applicant respectfully traverses the §102 rejection and courteously requests these Claims be allowed.

#### Claim Rejections under § 102/§ 103

Claims 8 – 12 and 16 stand rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Mach et al. (2001/0004780).

The Office previously stated:

Mach et al. teach dyeing polyesters with dye mixtures comprising C.I. Solvent Brown 53 and C.I. Disperse Violet 57 (page 1, paragraphs 0010-0012). Mach et al. further teach printing the textiles with the same dye combinations (page 1, paragraph 0014). Mach et al. further teach producing military camouflage articles with the dyed fibers (page 1, paragraph 0009). While Mach et al. is silent as to producing clothing from the textiles, this would be encompassed by the teachings of Mach et al., since camouflage military uniforms are commonly produced from dyed polyester.

Accordingly, Mach et al. anticipate the limitations of the instant claims.

In the alternative, if the teachings of Mach et al. are not sufficient to anticipate the material limitations of the instant claims, it would have been nonetheless obvious to select the instantly claimed components from the teachings of Mach et al. to arrive at the instant invention because Mach et al. teach similar textiles dyed by similar dyes with similar methods. Mach et al. further teach producing camouflage articles with high fastness levels and methods that are more economical. It would further have been obvious to produce clothing from the dyed polyester textile because military uniforms are commonly camouflage and polyester is a well-known component of textile materials.

The Office further states in the response to arguments: "Mach et al., clearly teach dyeing or printing spun dyed fibers comprising polyester and teaches that the dyed used for spin dyeing may be used for printing".

The Applicant can not agree. Respectfully speaking Mach, et al. relates to a textile spun-dyed fiber material comprising synthetic fibers, see Abstract and paragraphs [0012] through [0015]. More particularly see paragraphs [0012] through [0014] of Mach, et al.

[0012] Preferred dyes useful for spin dyeing the synthetic fiber fraction include for example C.I. Solvent Blue 122, C.I. Solvent Blue 132, C.I. Solvent Blue 104, C.I. Solvent Blue 45, C.I. Solvent Yellow 83, C.I. Solvent Yellow 147, C.I. Solvent Brown 53, C.I. Disperse Violet 57 and C.I. Pigment Blue 29.

[0013] The spin dyeing process is known per se. In spin dyeing, the spinning solution or melt is admixed with pigment or soluble dyes which remain in the fiber at the coagulation stage and thus color the fiber. The colorants are preferably added in the form of masterbatches which may already contain any assistants required. Details concerning spin dyeing may be found in Rompp Chemielexikon, 9th edition, 1992, volume 5, page 4247, and especially the references cited therein. Inventive textile spun-dyed material consisting exclusively of synthetic fibers is also useful as such for camouflage articles when a solid color is acceptable. In this case the desired hue is obtained exclusively by spin dyeing using appropriate amounts of dye.

[0014] Generally, however, the inventive textile spun-dyed fiber material consisting exclusively of synthetic fibers is used for producing military camouflage print articles. To this end, the desired camouflage patterns are printed on in the corresponding camouflage hues in a second step. This step may in principle employ the same dyes as already used in spin dyeing. Generally, disperse dyes are used for polyester fibers and acid or metal complex dyes for polyamide fibers. It is advantageous in this case to produce the spin dyeing in that shade which corresponds to the lightest hue of the camouflage print pattern and to print on the darker patterns. The lightest hue is generally light green. (emphasis added)

One with ordinary skill in the art and common sense, having a knowledge of Mach, et al., could not be motivated to use the colorants of paragraph [0012] to improve the lightfastness of a polyester material or have any expectation of

reasonable success by substituting the colorants of paragraph [0012] into the mixture of instant Claims 8 – 12 and 16.

More succinctly stated, Mach et al., is directed to a textile spun-dyed fiber material comprising synthetic fibers and mentions in paragraph [0014] that the camouflage patterns are printed on and may employ the same dyes as used in spin dyeing. As previously stated this is in stark contrast to the instant application which is directed to a mixture comprising at least one transition metal coordination compound applied during the thermosol, exhaust, or continuous dyeing process from an aqueous bath. Regarding example 3 of Mach, et al., the Vat dyes are used for cross-dyeing the cotton portion of the 50:50 PES/Cotton blend fabric, and furthermore none of C.I. Vat Orange 01, C.I. Vat Blue 66, and C.I. Vat Black 27 are a transition metal coordination compound of Claim 8. Therefore, Mach et al., can not provide one with ordinary skill in the art and common sense at the time of the invention the required teaching, suggestion or motivation to modify the spun-dyed fiber of Mach, et al., to arrive at the instantly claimed embodiment of the invention. Applicants, therefore respectfully traverse the §102/§103 rejection and request Claims 8 – 12 and 16 be allowed.

#### Claim Rejections under § 103

Claims 1 – 6 stand rejected under 35 U.S.C. 103(a) as obvious over Mach et al. (2001/0004780) in view of Schwander (US 4,221,911). This rejection is respectfully traversed.

The Office states:

“Schwander teaches that in the case of dyeing polyester with water insoluble dyes, it is functionally equivalent to use spin dyeing as well as exhaust dyeing in water baths or thermosol processes, (column 8, lines 24 – 68; column 9, lines 1 – 25).

It would have been obvious to one with ordinary skill in the art at the time the invention was made to modify the methods of Mach by incorporating the exhaust or thermosol methods of Schwander because Schwander teaches the functional equivalence of dyeing polyester with water insoluble dyes with these methods. Substitution of art recognized equivalents only requires routine skill in the art.”

Applicant can not agree. One with ordinary skill in the art, would be very aware that Schwander teaches the possible use of the dyes of formula (I), in spin dyeing, and exhaust or thermosol methods. Schwander does not teach the equivalence of spin dyeing and exhaust or thermosol methods. See for example Schwander, column 8, line 67 through column 9, line 10. Schwander never compares the dyeing processes.

A sustainable *prima facie* case of obviousness, requires that the prior art contain some suggestion or incentive that would have motivated the skilled artisan to modify a reference or combine references in a manner to arrive at the claimed invention.

No where in Schwander, or Mach, et al., or a combination of the two is the teaching or suggestion made to use the instantly claimed transition metal coordination compound for improving the lightfastness of dyed polyester rise to a level that could motivate an ordinary artisan possessing common sense at the time of the invention, to consider either of the cited references or their combination as an equivalent, which is suitable as a substitution for the instantly claimed embodiment of the invention.

For at least the reasons stated above, regarding the lack of teaching, suggestion, or motivation provided by Mach, et al., in view of Schwander, Applicant is of the courteous position that the § 103 rejection has been overcome. Reconsideration and withdrawal of the §103 rejection is respectfully and earnestly solicited.

Claim 13 stands rejected under 35 U.S.C. 103(a) as obvious over Mach et al. (2001/0004780) in view of Schwander (US 4,221,911) and further in view of Bohler, et al., (US 4,439,562). This rejection is respectfully traversed.

The Office state, "Bohler, et al., teach spin dyeing polyester with compounds of formula (I) to produce polyesters with good fastness to light and wetness (column 1, lines 1 – 30; column 3, lines 55 – 59)."

Applicant courteously can not agree. Bohler, et al., teach spinning a mass-dyed linear, aromatic polyester. The Office's attention is courteously directed to column 1, lines 5 – 6, and column 3, lines 53 – 54. An ordinary artisan would be very cognizant of the vast difference between spin dyeing a polyester filament and spinning a mass-dyed polyester. For at least this reason and the reasons stated above, regarding the lack of teaching, suggestion, or motivation provided by Mach et al. (2001/0004780) in view of Schwander (US 4,221,911), Applicant is of the courteous position that the §103 rejection has been traversed. Reconsideration and withdrawal of the §103 rejections is respectfully and earnestly solicited.

Claim 15 stands rejected under 35 U.S.C. 103(a) as obvious over Mach et al. (2001/0004780) in view of Bohler, et al., (US 4,439,562). This rejection is respectfully traversed.

As previously stated, Bohler, et al., teach spinning a mass-dyed linear, aromatic polyester, the Office's attention is courteously directed to column 1, lines 5 – 6, and column 3, lines 53 – 54. An ordinary artisan would be very cognizant of the vast difference between spin dyeing a polyester and spinning a mass-dyed polyester as taught by Bohler, et al. For at least this reason, Applicant is of the courteous position that the §103 rejection has been traversed. Reconsideration and withdrawal of the §103 rejections is respectfully and earnestly solicited.

Claim 17 stands rejected under 35 U.S.C. 103(a) as obvious over Mach et al. (2001/0004780) in view of Tucci, et al., (US 6,326,015). This rejection is respectfully traversed.

For at least the reasons previously stated above, regarding the lack of teaching, suggestion, or motivation provided by Mach et al. (2001/0004780). Applicant is of the courteous position that Tucci, et al., (US 6,326,015), could not provide any further motivation for the skilled artisan to combine the references as proffered by the Office, as such the Applicant courteously believes the §103

rejection has been traversed. Reconsideration and withdrawal of the §103 rejections is respectfully and earnestly solicited.

Claims 1 – 3 stand rejected under 35 U.S.C. 103(a) as obvious over Dreyer, et al. (US 3,096,319). This rejection is respectfully traversed.

The Office states, “Dreyer, et al., teach dyeing polyesters (column 3, lines 25 – 30) in a dye bath with compositions comprising water insoluble complexes comprising copper, nickel, cobalt, and chromium (column 2, lines 44 – 48) in aqueous suspension (column 3, lines 13 – 19).”

The Applicant courteously can not agree. Dreyer, et al., no where teach or suggest a method for improving lightfastness as claimed in currently amended claim 1. Applicant, therefore, courteously believes the §103 rejection has been traversed. Reconsideration and withdrawal of the §103 rejections is respectfully and earnestly solicited.

Claims 1 – 3 stand rejected under 35 U.S.C. 103(a) as obvious over Salathe, et al. (US 4,444,564). This rejection is respectfully traversed.

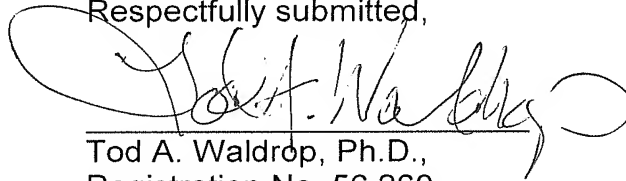
The Office states, “Salathe, et al., teach dyeing wool/polyesters (abstract) in an exhaust bath (column 3, lines 9 – 12) with compositions comprising transition metal complexes comprising copper, nickel, cobalt, or chromium (column 2, lines 50 – 60; columns 5, 13, 15, 19, and 21) in aqueous medium (column 24, lines 40 – 42 and line 57).”

The Applicant courteously can not agree. Salathe, et al., no where teach or suggest a method for improving lightfastness as claimed in currently amended claim 1. Furthermore, one with ordinary skill in the art would be very cognizant of the fact that all the transition metal complexes taught by Salathe, et al., are anionic dyes for dyeing the wool portion and not the polyester portion of the fiber blends referenced by the abstract. Applicant, therefore, courteously believes the §103 rejection has been traversed. Reconsideration and withdrawal of the §103 rejections is respectfully and earnestly solicited.

As the total number of claims does not exceed the number of claims originally paid for, no fee is believed due. However, if an additional fee is required, the Commissioner is hereby authorized to credit any overpayment or charge any fee deficiency to Deposit Account No. 03-2060.

In view of the forgoing amendments and remarks, the present Application is believed to be in condition for allowance, and reconsideration of it is respectfully requested. If the Examiner disagrees, she is courteously requested to contact the agent for Applicant at the telephone number provided below.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Tod A. Waldrop', is written over a horizontal line.

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